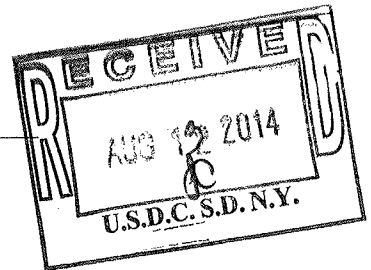


14 MISC 258

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re Application of THE COALITION TO PROTECT :  
CLIFTON BAY and LOUIS BACON for an Order :  
Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for :  
Use in Foreign Proceedings. :  
-----X

Case No. 14-MC



**APPLICATION AND PETITION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 TO  
CONDUCT DISCOVERY FOR USE IN FOREIGN PROCEEDINGS**

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1. Based upon the annexed Declarations of Orin Snyder, Jenny Afia, Louis Bacon, Jack Palladino, and Stephen Feralio, and the accompanying Memorandum of Law, The Coalition To Protect Clifton Bay (commonly referred to as, “Save the Bays”) and Louis Bacon (collectively “Petitioners”) hereby petition and apply to this Court for an Order, pursuant to 28 U.S.C. § 1782 and Rules 26, 30 and 45 of the Federal Rules of Civil Procedure, granting Petitioners leave to serve on Stephen Feralio (“Respondent”) the subpoenas attached as Exhibit A to the Declaration of Orin Snyder and for entry of a scheduling order for a hearing on why Petitioners should not be granted leave to obtain discovery from Respondent for use in foreign proceedings.

2. The requested relief is for the purpose of obtaining discovery in aid of two judicial review proceedings brought by Petitioner Save the Bays before a foreign tribunal in the Bahamas, and five civil proceedings brought by Petitioner Louis Bacon before a foreign tribunal in the Bahamas. The proceedings are *Ex Parte Application for Leave to Apply for Judicial Review And Interlocutory Relief*, 2013/PUB/jrv/00012 (Supreme Court of the Commonwealth of the Bahamas); *Amended Ex Parte Application For Leave to Apply for Judicial Review and for Interlocutory Relief*, 2014/PUB/jrv/00015 (Supreme Court of the Commonwealth of the Bahamas); *Bacon v. Brown & McKinney*, 2012/COM/gen/00503 (Supreme Court of the Commonwealth of the Bahamas); *Bacon v. Earlin Williams*, 2012/CLE/gen/00923 (Supreme Court of the Commonwealth of the Bahamas); *Bacon v. Phillippa “Lady” Russell*, 2013/CLE/gen/1616 (Supreme Court of the Commonwealth of the Bahamas); *Bacon v. Carvel Francis*, 2013/CLE/gen/01615 (Supreme Court of the Commonwealth of the Bahamas); and *Bacon v. Jones Commc’ns Ltd. & Wendall Jones*, 2012/CLE/gen/00838 (Supreme Court of the Commonwealth of the Bahamas) (collectively, “Bahamian Actions”).

3. Petitioners seek court authorization to subpoena videotape and documentary evidence (i.e., notes and email correspondence) in Mr. Feralio's possession and to depose Mr. Feralio about his personal knowledge of Nygård's environmental abuses and the smear campaign against one of this nation's most respected conservationists and businessmen, Petitioner Louis Bacon. Mr. Feralio acted as the personal videographer for Nygård during the very time that Nygård was harming the Bahamian environment and orchestrating the smear campaign. During this time period (2011–2013), Mr. Feralio taped over one thousand hours of video footage of Nygård. As part of this work, Mr. Feralio accompanied Nygård around the world, filming Nygård in his daily life, including while conducting meetings, participating in phone calls, and hosting and attending events. Mr. Feralio spent considerable time at Nygård Cay and lived there while filming in the Bahamas. Therefore he was present and filming at the scene of the environmental crime—at the precise location where Nygård was engaging in dredging and other environmentally damaging activities that are subject of the two Judicial Review proceedings brought by Save The Bays. As a result, he likely filmed any communications Nygård had with others (including government officials) regarding his plans to expand Nygård Cay. In addition, with respect to Nygård's smear campaign, Mr. Feralio did not just witness and videotape these illegal activities—he participated in them as well. As Mr. Feralio frankly acknowledged, he created and edited multiple defamatory videos about Mr. Bacon, at Nygård's direction. In sum, Mr. Feralio has personal knowledge and evidence regarding Nygård's destruction of the marine environment of the Bahamas and his relentless smear campaign against Mr. Bacon.

4. Thus, Mr. Feralio's testimony and evidence, including over one thousand hours of video recordings, contain evidence for use in the above-listed judicial actions currently pending in the Bahamas. Because Petitioners are the plaintiffs in those Bahamian Actions, they are

“interested persons” in the foreign proceedings under Section 1782. Furthermore, the target of this discovery—Mr. Feralio—is found within this judicial district and will be served with the subpoenas in this district. Petitioners thus meet all the statutory criteria for the issuance of an order allowing the requested discovery. 28 U.S.C. § 1782. Moreover, as set forth in Petitioners Memorandum of Law filed concurrently herewith, all of the discretionary factors that this Court may consider likewise favor granting this Petition and Application.

5. Accordingly, Petitioners respectfully request that this Court grant their application, permit the issuance of the requested subpoenas, and set an expedited briefing schedule pursuant to the attached proposed order to show cause for any future motions related to the subpoenas.

Dated: August 13, 2014

Respectfully submitted,



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